

Public Consultation on Draft Heads of Petroleum and Extraction (Safety) Bill 2007

Irish Offshore Operator's Association (IOOA) Comments 28/04/'08

General:

The IOOA welcomes the general move to consolidate all safety regulation of upstream activities under one set of legislation and one regulatory agency, i.e. CER. There are, however, concerns about the wording and content of proposed legislative changes, which may lead to uncertainty or ambiguity which would make implementation of regulations difficult to understand and possibly subject to legal challenges or delays in approval processes.

The main concerns may be summarised as follows:

1. Definitions of scope, extent and applicability are unclear and appear to be based on various (unspecified) sources. (Heads 2,9,10)
2. The definition of an “undertaking” is unclear, although it is noted that the CER may specify “classes of undertaking”. Is it intended that an “undertaking” is any licensee under the Petroleum and Other Minerals Development Act? (Head 10)
3. The reference to “Petroleum Exploration and Extraction Activities” needs to be clarified, as the range of activities in the industry include transient or temporary activities (e.g. seismic surveying) and permanent activities (such as production). It is essential that the differences between Exploration and Extraction are recognised and that equipment or facilities regulated by other means (e.g. Marine Classification) is excluded. (Head 10)
4. Demarcation between CER's proposed role and the role of existing regulatory agencies, e.g. Health and Safety Authority, Maritime Safety Directorate, is not clearly set out. This needs to be clearly defined, to avoid any possibility of “double regulation”, which could lead to inconsistent application of requirements. (Heads 2,8,10)
5. There appears to be an inherent contradiction in the intent of introducing a “goal-setting” Safety Case regime, while at the same time giving the CER a broad remit to introduce a range of unspecified restrictions or orders, as they “see fit” (Head 11)
6. IOOA would be concerned that adequate expertise and guidance is available within the CER to support the proposed Safety Framework. For example, taking the UK Safety Case regime as a point of reference, the legislation is supported by a number of additional regulations specific to the offshore industry e.g.. Prevention of Fire, Explosion and Emergency Response (PFEER) and Offshore Installations and Wells Design & Const Regulations (DCR) etc. (Head 3)
7. The proposed linkage between the safety permit and other E&P Licenses is unclear - any such linkage needs to be clearly defined to avoid negative impacts on what is already a convoluted permitting regime (Head 15).

In general, IOOA are appreciative of the procedures already implemented by the CER under existing legislation for the gas industry and would support a similar framework being extended to other upstream activities, subject, as stated above, to clear definitions of scope and application. The IOOA is available for continued dialogue during the preparation of this legislation.

Specific comments against each of the proposed Heads is given below.

Head 1 Short Title and Commencement

No Comments

Head 2 Interpretation

This section is extremely unclear:

The explanatory note appears to include “all petroleum exploration and extraction infrastructure and associated processes” whereas the specific provisions enumerated appear to be fragmentary and only include certain elements, viz.:

“strategic gas infrastructure development.....comprising a strategic downstream gas pipeline or a strategic upstream gas pipeline and associated terminals.....including any associated discharge pipe”

“ a strategic upstream gas pipeline means.....part of a gas pipeline constructed as part of a gas production project or for ...conveying unprocessed natural gas.....as will be situate in the functional area of a planning authority”

“ an oil pipeline...in excess of 20km and associated terminals”

The definitions above are selective and appear to be based on the configuration of existing projects in Ireland, of which there are very few, and which do not necessarily represent the full range of development scenarios. As it would be impossible to describe all the physical characteristics of petroleum extraction in legislation, a definition based on function or purpose of the facilities would appear to be more easily interpreted.

Explanatory Note (i);

The new Safety regime "will ensure safety in design, construction of petroleum exploration/extraction infrastructure and ongoing operational safety of such infrastructure".

The reference to “design and construction” appears to overlap existing provisions in the Safety, Health and Welfare at Work Act, 2005 (S.17) – will there be a clear definition of what is to be regulated by CER, as distinct from the Health and Safety Authority, or other bodies?

Are there sufficient HSA and CER resources in place to enable the process to work effectively, or where will the expertise be drawn from?

Head 3 Regulation of Safety by Commission for Safety Regulation (CER)

Head 3 (b) (ii);

This section refers to a system of inspection, auditing and verification.

Typically, these activities are conducted by an independent body i.e. Lloyds/DNV etc contracted by the Operator. It is suggested that the actual mechanisms for any verification or audit scheme are developed by the CER within the proposed safety framework.

Head 3 (b) (iii) (and also Heads 4,6);

The intended SC submission process is rather vague.

- At what stage is the CER asking for the SC submission to take place (and subsequent Permit approval)?
- Will this be at the project approval phase, during the design process or prior to the commencement of operations?

Additional SC's may be deemed necessary to cover specific operations i.e. Drilling or Hook-up and Commissioning etc.

Explanatory Note:

Role of the Gas Technical Standards Committee: this body's expertise is currently restricted to onshore gas transmission and distribution – is it intended to restructure the committee to reflect the range of technical disciplines covered by petroleum exploration and production, which may include both gas and oil.

Head 4 Safety Management System and Safety Case

See previous comments under Head 3 (b) (iii)

Head 5 Submission and Assessment of Safety Case

Head 5-(1):

A period of six months after commencement of the regulations is too short for preparation of a Safety Case, which typically may take 9-12 months

Head 5 (2);

- Why is it deemed necessary to engage an independent person to assess the Companies SMS as described in the SC? Surely this is the role of the Commissions inspectorate.
- How is a suitably qualified person determined or assessed?

Head 5 (4)

How are existing operations to be dealt with? It is strongly urged that appropriate transitional arrangements are allowed for existing operations, after commencement of any new regulations

Head 6 Approval of Safety Case by the Commission

Head 6-(7);

Timing of approval process: a definite time period should be specified, rather than “as soon as practicable...”

See also earlier comments under Head 3 (b) (iii)

Head 7 Revision of Safety Case

Head 7-(1):

The definition of a “material change” needs to be considered – there should be clear guidance on what is intended by this phrase.

Requirement to submit “revised safety case” should be replaced with a provision to allow submission of an amended section or sections, rather than the entire document

Head 8 Powers of the Direction

Head 8-(1), (20), (3):

It is noted that the provisions for Improvement and Prohibition Notices appears to overlap with provisions under the S, H & W W Act, 2005 and there should be a similar

level of definition of detailed procedures included in this Act. However, the provision for the CER to issue a Cessation Order to cease an undertaking's "entire operation" appears to go further than provisions in other legislation and appears draconian and far reaching, without further clarification

Head 9 General Duty of Petroleum and Extraction Undertakings

This statement seems out of place - would be better placed as a preamble or preliminary statement.

Overlaps with provisions of SHAWaW Act, but again greater definition of general obligations and duties to be included in Act.

Head 10 Regulations to designate a class or classes of exploration or extraction infrastructure

The definition of "works" and "infrastructure" needs to be clarified – is it the intention that the Act only applies to permanent infrastructure but not mobile or temporary equipment such as seismic survey vessels or drilling rigs? It may be noted that many activities undertaken as part of Petroleum exploration and extraction are temporary in nature and may use mobile plant and equipment such as survey vessels, pipelay vessels and the like. This type of facility may operate internationally in a number of jurisdictions and it would not appear reasonable that any such vessels covered by an existing International Marine Classification system would be required to have a Safety Case under Irish legislation.

Head 11 Regulations relating to exploration and extraction safety activities

This appears to provide an extremely broad ranging and unfettered authority for the CER to make "specifications or requirements regarding the installation or maintenance of infrastructure" There appears to be an inherent contradiction in providing for a Safety Case regime, but also allowing the CER to be prescriptive when it suits.

The reference in S 2(b) to "the pipeline" is unclear – is this only to apply to pipeline operations?

Head 12 Petroleum Emergency Officers

This section appears to be based on provisions for Emergency Officers in the onshore gas distribution industry, for example to enable officers to enter buildings in the event of a gas leak. IOOA do not believe this is required for the petroleum exploration/extraction industry as facilities are designed and operated to entirely different standards and more importantly are always under the direct control and supervision of the undertaking. Furthermore the provisions in Para. (5) for direct action by Emergency Officers appointed by the undertaking appear to be superfluous – every undertaking will have personnel empowered and trained to do the things set out and it is unclear why this needs to be written in legislation

Head 13 Protection against Dismissal or Penalisation

Please clarify why the “Protection against Dismissal or Penalisation” is included within this Safety Case legislation, is this not adequately addressed in the Unfair Dismissals Acts 1977?

Head 14 Petroleum Safety Officers

This provision appears to be counter to the principle of the Safety Case regime and introduces serious questions of liability and safety responsibility. Who is responsible if the CER appointed Safety Officer caused damage to an installation or causes an escalation of an incident. The whole presumption of a Safety Case regime is that the undertaking is responsible for maintaining safety and integrity of its facilities at all times and it is difficult to see how an outside party could be sufficiently familiar with any undertaking’s operation to be able to act in a way which does not pose a risk of increasing damage or risk, wither to the installation or to the public.

Head 15 Conditions of Ministerial Consents to construct Petroleum Exploration and Extraction Infrastructure

IOOA notes the proposed linkage of a “safety permit” with the “consent to construct” infrastructure and would be concerned that appropriate recognition is given to the timing of issue of any such permit such that it is linked to the commencement of operations of the proposed infrastructure and not the construction of the infrastructure (for example, as is the requirement under IPPCL legislation)

Head 16 Recoupment of costs by CER

There appears to be no provision for examination of the charging basis for any levies imposed by the CER – any such basis should be clearly defined in the legislation, in the interests of avoiding ambiguity or disputes.